



**Stacey E. Pickering**  
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# LEGAL UPDATE

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# Current Purchase Law

**Contains no definitions**

**Allows a choice of receiving sealed bids, electronic bids, bids from reverse auction, or any other method that promotes open competition. The method is chosen by the governing authority.**

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# 2017 Regular Session

## House Bill 926, Effective July 1, 2017

- Replaces Definitions

## House Bill 1109, Effective January 1, 2018

- Requires Reverse Auctions

## House Bill 1106, Effective January 1, 2018

- Requires Reverse Auctions
- Has Electronic Bid Section

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# A reminder:

**Purchases of \$5,000 or less require no quotes or bids.**

**Purchases of \$5,000 to \$50,000 require you to obtain two competitive quotes.**

**Purchases of more than \$50,000 require advertising for bids.**

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# Current Language for Bids

The purchasing entity may designate the method by which the bids will be received, including, but not limited to, bids sealed in an envelope, bids received electronically in a secure system, bids received via a reverse auction, or bids received by any other method that promotes open competition and has been approved by the Office of Purchasing and Travel. **However, reverse auction shall not be used for any public contract for design or construction of public facilities, including buildings, roads and bridges.**

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# New Language for Bids

Reverse auctions shall be the primary method for receiving bids during the bidding process... However, **reverse auction shall not be used for any public contract for design or construction of public facilities**, including buildings, roads and bridges. The Public Procurement Review Board must approve any contract entered into by alternative process...

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# What is a “Reverse Auction”?

**An auction where the role of buyer and seller is reversed. The buyer advertises a need and sellers compete to provide the product or service. Generally, the seller with the lowest bid wins the auction.**

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# Electronic Bids

**... governing authorities shall provide a secure electronic interactive system for the submittal of bids requiring competitive bidding that shall be an additional bidding option for those bidders who choose to submit their bids electronically. ... governing authorities shall make the appropriate provisions necessary to accept electronic bids from those bidders who choose to submit their bids electronically for all purchases requiring competitive bidding under this section.**

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# Electronic Bids

**Any special condition or requirement for the electronic bid submission shall be specified in the advertisement for bids required by this section. Agencies or governing authorities that are currently without available high speed Internet access shall be exempt from the requirement of this subparagraph (v) until such time that high speed Internet access becomes available.**

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# Electronic Bids

**Any county having a population of less than twenty thousand (20,000) and any municipality having a population of less than ten thousand (10,000) shall be exempt from the provisions of this subparagraph (v). ... The provisions of this subparagraph (v) shall not require any bidder to submit bids electronically.**

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# Electronic Bids

**When construction bids are submitted electronically, the requirement for including a certificate of responsibility, or a statement that the bid enclosed does not exceed Fifty Thousand Dollars (\$50,000.00), on the exterior of the bid envelope as indicated in Section 31-3-21(1) and (2) shall be deemed in compliance with by including same as an attachment with the electronic bid submittal.**

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# Opinion to Nowak

- **Q** House Bill 1106 (2017) amends Section 31-7-13 to provide that “Reverse auctions shall be the primary method for receiving bids during the bidding process.” It also provides that a “purchasing entity” may determine that a “reverse auction is not in the best interest of the state, then that determination must be approved by the Public Procurement Review Board.” Does this only apply to state agencies, or does it apply to all local government entities?
- **A** These provisions apply to governing authorities as well as state agencies. Had the Legislature intended them to only apply to state agencies, they would have said “state agencies” instead of “purchasing authorities.” In our opinion, “purchasing authorities” includes all entities subject to the requirements of Section 31-7-13.

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# Opinion to Smith

- **Q** We were assured this would only apply to State Agencies and not political subdivisions. Therefore I would ask that the opinion previously issued by your office be withdrawn and a substitute opinion be inserted in its place and stead, correcting any misconception political subdivisions outside those agencies of the State of Mississippi would be governed by this method of bidding.
- **A** We remain of the opinion that, due to the plain and unambiguous language contained in the statute, Mississippi Code Annotated Section 31-7-13, specifically Section 31-7-13(c)(2), applies to state agencies and governing authorities.

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# Opinion to Moseley and Morgan

- **Moseley** "In addition, any fee to participate should not be borne by potential bidders. A required fee may result in a less competitive procurement."
- **Morgan** "In response to your fourth and fifth questions, we look to a previous opinion regarding a public bidding process for a reverse auction. In our opinion to Paul Moseley dated January 24, 2014, our office opined that in a public bidding process for a reverse auction, pursuant Section 31-7-13(c), conducted by a facilitator on behalf of a county, the county could not require a bidder to pay a fee to participate in a public bidding process. It was the opinion of this office that such a required fee may result in a less competitive procurement."

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# Suggestions

**Term Bids authorized in §31-7-13(n)**

**Take bids in December 2017 for items it may be difficult to purchase in a Reverse Auction. Can be for up to 60 months.**

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# Best Practices

Before entering into a contract for reverse auction services the governing authority should issue publicly a request for proposals for such services.

Negotiate and enter into a contract with the most qualified proposal. The contract shall be specific as to the cost being charged the governing authority and **shall not allow any fee to participate be borne by potential bidders.**

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# Best Practices

The governing authority should develop clear detailed specifications and define requirements and maintain a list of who has requested and received these specifications.

Section 31-7-13(c)(v) states that governing authority shall not require a bidder to submit their bid electronically. The governing authority shall provide a bidder wishing to participate in a reverse auction the means with which to participate non-electronically.

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# Best Practices

The governing authority should suggest that all participants in the reverse auction have a backup plan/computer in case of any unforeseen technical failures.

The governing authority should allow for an “auto-extend” during an auction so a bid in the last minute or so does not end the bidding with out allowing for other bidders to improve their bid.

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# Other New Bills

- HB 1149 (effective after passage)-Late fees on solid waste collection. Fee is 1\$ or 10%, whichever is greater.
- HB 469 (effective July 1, 2017)-This amends 19-5-167 county board of supervisors shall have the authority to dissolve, redefine and reconfigure fire protection districts to ensure the most appropriate and efficient coverage.

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# Other New Bills

- HB 1116 (effective July 1, 2017)-Amends notice requirements for special meetings by adding a section to Miss. Code Ann. 25-41-13.
- (b) Except as otherwise provided by law, a notice of a called special meeting shall be posted to the public body's website, if the public body has a website and has the capability to update the website, not less than one (1) hour before the meeting. A copy of this notice shall be transmitted via email or facsimile not less than one (1) hour before the meeting to any citizen and any publication, broadcast and digital media with a general circulation or coverage within the public body's jurisdiction, that has submitted in writing its interest to receive these notices.

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# Other New Bills

- Any public body may, at its discretion, purge any list of publications, broadcasts or digital media that have requested to receive the notices once every twenty-four (24) months. After the purge, any publication, broadcast or digital media may resubmit in writing its interest to receive the notices. Nothing in this paragraph (b) shall add additional notice requirements for meetings of public bodies held in cases of emergencies. The provision of this paragraph (b) requiring notice to be posted on the public body's website shall not apply to municipalities with a population as determined by the latest federal decennial census of less than twenty-five thousand (25,000) inhabitants, and any county with less than fifty thousand (50,000) according to the latest federal decennial census.

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# Other New Bills

- SB 2437 (effective July 1, 2017)-“Taxing entity” revenue reports now go to DOR
- SB 2836 (effective July 1, 2017)-Amended 31-7-103 and 31-7-119 to increase the minimum amount required for using a purchase order to \$1,500 from \$1,000.

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# QUESTIONS?

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